



File Code: 1570 (218)
#15-01-00-0041

Date: JUN 25 2015

Mr. Greg Dyson
WildEarth Guardians
1536 Wynkoop Street, Ste. 310
Denver, CO 80202

Dear Mr. Dyson:

This letter is in response to your objection to the Darby Lumber Lands Phase 1 Project on the Bitterroot National Forest (Forest). The Responsible Official, Bitterroot Forest Supervisor Julie King, and I as the Objection Reviewing Officer have read your objections and suggested remedies, and reviewed the Environmental Assessment (EA) and draft Decision Notice (DN), the project file, and the comments submitted to this project. This letter details my responses to the objections based on my review and understanding of the disclosed environmental effects of this project in accordance with 36 CFR 218, *Project Level Predecisional Administrative Review Process*.

The responsible official and I have reviewed the project in light of the issues presented in your objections. I have considered the issues and suggested remedies and included my reasons for response to these issues, which are detailed below.

The regulations allow for the parties to meet in order to resolve issues (36 CFR 218.11(a)). A resolution meeting/conference call was held June 22, 2015, with participation of all objectors, the Forest Supervisor, Julie King, with members of her staff, and me. I appreciated the opportunity to gain a better understanding of your concerns. You spoke of the need to better address minimization criteria, particularly elk habitat, and as you will see in my response below, we agree on that point. No resolution was reached on your remaining issues.

This letter satisfies the requirements of 36 CFR 218.11, *Resolution of Objections*. No further review from any other Forest Service or U.S. Department of Agriculture official of my written response to these objections is available.

Response to Objections

I have reviewed your issues and concerns and offer the following responses to the issues you raised in your letter.

Issue 1: You assert that Darby Lumber Lands Phase 1 fails to comply with the Travel Management Rule and Minimization Criteria for several resources.

Response: The Forest completed a compliance check for 36 CFR 212.55, including descriptions regarding the minimization criteria (Project File LAWS_001). This document is cited in the EA.



There are several places in the draft DN/ FONSI that speak to minimization of effects to various resources (Table 2.6-1), including those brought up in your comment letters (e.g., elk habitat, dust/sediment in streams). It is clear that all the factors were considered in the project documentation; however, there is no discussion in the DN/FONSI regarding minimization criteria or how it was applied.

Instructions: Clarify and explain in the decision document how the minimization criteria were considered and applied in the trail and area designation process.

Issue 2a: You contend that sediment from culvert removal will affect sensitive fish habitat, and should be mitigated.

Response: The EA states on page 5 that the main purpose of this proposal is to “reduce road-related sediment entering streams” on roads that were previously built on industrial lands that have since been acquired by the US Forest Service. The EA considers sediment and aquatic (fish) habitat in the effects analysis. It begins by describing that the design features of the project do not totally eliminate sediment from activities, but reduce effects to the greatest feasible extent (EA p. 47, also see Table 2.6-1 on p. 17). The short-term pulse of sediment that occurs with culvert removal is acknowledged, as is the very large volume of sediment that arises when culverts plug or rust out, and fail. Culvert removal results in long-term sediment reduction beneficial to fish habitat.

The bull trout programmatic biological opinion for road-related work received from the US Fish and Wildlife Service contains mitigation measures that will be applied to this project. Permits from the State of Montana must be obtained prior to implementation, and the Montana Stream Protection Act guides this process. The design criteria are reviewed by state fisheries biologists for effectiveness in preventing sediment entry.

I find the Forest will apply mitigation measures to reduce sediment, and has considered the effects of sediment on fish habitat.

Instructions: None required.

Issue 2b: You assert that the Riparian Habitat Conservation Area (RHCA) widths applied in this project are a violation of the Inland Native Fish Strategy (INFISH).

Response: The INFISH DN states that “the effectiveness of riparian conservation areas in influencing sediment delivery from non-channelized (sediment) flow is highly variable.” On page 37 of the Darby Lumber Lands EA, aquatic specialists specify 100 feet as the sediment-contributing distance to streams and provide the rationale for selecting that distance. Documents in the project file provide a thorough assessment and detailed rationale regarding project consistency with INFISH. There is no requirement in INFISH that mandates the Forest Service to use a specified buffer distance to analyze sediment delivery.

I find the project does not violate INFISH, the Forest Plan, or National Forest Management Act.

Instructions: None required.

Issue 2c: You contend that the revised EA is inconsistent with INFISH standards and guides because decommissioning existing roads will reduce the quality of bull trout habitat, and is therefore arbitrary, capricious, an abuse of discretion and not in accordance with the law.

Response: The need for the proposal is clearly described in Chapter 1 of the EA, including the science behind the proposed action (EA pp. 5 to 6). As described in response to Issue 2a, the EA acknowledges a pulse of sediment occurs with the pulling of culverts and recontouring slopes. It also plainly shows substantial management-related chronic fine sediment reduction in all three of the 6th level watersheds, ranging from 26 percent to 74 percent (p. 47). The EA is explicit on the overall effects of the action alternative. INFISH does not require each individual action within an alternative to result in a net improvement to aquatic habitat conditions. The project meets INFISH standards and guidelines by avoiding impacts to native fish and by moving the area toward the attainment of riparian management objectives (EA p. 55). The fisheries biologist includes a thorough assessment and detailed rationale regarding consistency with INFISH (Project File (PF) Aquatics 009).

I find the project is consistent with INFISH, has sound rationale for the need to reduce sediment from roads on acquired lands, applies sound scientific information in the effects analysis, and is in the best interest of native fish and their habitat.

Instructions: None required.

Issue 3a: You contend that the EA fails to account for activities that may increase stream temperatures and harm bull trout.

Response: The biological assessment (PF Aquatics 011, p. 2) concludes that project activities would be unlikely to increase water temperatures measurably. No new roads or trails are proposed in streamside areas; therefore there is no associated vegetation clearing that would affect water temperature. Some clearing would be performed adjacent to culverts to allow for equipment entry, but the clearings around culverts would be below the scale or intensity of treatments known to measurably affect stream temperature or thermal regimes.

The EA does not include a discussion regarding stream temperature because it is not an issue for the actions included in the project. There is no violation of NEPA or the Endangered Species Act (ESA).

Instructions: None required.

Issue 3b: You contend that the District must engage in Section 7(a)(2) consultation for bull trout and bull trout critical habitat. You also contend the biological assessment should be part of the public comment opportunity.

Response: Implementing regulations for ESA regarding interagency cooperation state: "The biological assessment shall be completed before any contract for construction is entered into and before construction is begun" (50 CFR 402.12(b)(2)). The biological assessment is an interagency cooperation process document that is not completed until after the public comment under NEPA is completed (40 CFR 1503.1). The biological assessment is available in the project file and the impacts to wildlife and fish, including impacts to lynx, cuckoo, and bull trout were analyzed and displayed in the EA, which was subject to public review and comment.

Section 7 ESA consultation for the Darby Lumber Lands Phase 1 project has been completed. A biological opinion dated April 15, 2015 was received from the US Fish and Wildlife Service (FWS) for "Road Related Activities that May affect Bull Trout and Bull Trout Critical Habitat in Western Montana." FWS concluded that road decommissioning and culvert removals are not likely to jeopardize the continued existence of bull trout and are not likely to destroy or adversely modify bull trout critical habitat (PF Aquatics 013). A biological assessment for activities

specific to Phase 1 (i.e. thinning aspen stands and new segments of roads and trails) was completed, and these activities were found to have no effect (PF Aquatics 011).

I find consultation requirements have been met and the project does not violate ESA. The DN will reflect that ESA consultation is complete on the Darby Lumber Lands Phase 1 project.

Instructions: None required.

Issue 4: You contend the project will create trails that increase sediment to Rye Creek and Sleeping Child Creek, 303(d) listed streams, in violation of the Clean Water Act.

Response: The revised EA and the draft DN clearly state that the "Fishtail" route in Upper Rye Creek has been dropped from Alternative B (EA p. 23, DN p. 6). A reference to this route's potential effects in the hydrology section was mistakenly left in the revised EA (p. 50). The EA states that "sediment from motorized trail use in the Upper Sleeping Child watershed is unlikely to change." The proposed action would result in a net reduction of road-related sediment production.

The Forest is aware of the inconsistency in the EA, and will remove the incorrect information. I find the project will not increase sediment to 303(d) listed streams and will not violate the Clean Water Act.

Instructions: None required.

Summary

In conclusion, I have reviewed your assertions that the project violates various environmental laws, regulations, policies, and the Forest Plan. My review finds the project is in compliance with applicable laws and the Forest Plan. I have in one instance provided instruction for the Forest to provide additional or clarifying information to better demonstrate compliance with law, regulation, or policy.

My review constitutes the final administrative determination of the Department of Agriculture; no further review from any other Forest Service or Department of Agriculture official of my written response to your objection is available (36 CFR 218.11(b)(2)).

Sincerely,



DAVID E. SCHMID
Acting Regional Forester

cc: Julie King
Ray G. Smith
Kim Smolt
Amy Fox